

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

**FILED**

**DEC 13 2005**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**ACTION EMPLOYMENT  
RESOURCES, INC.,**

Plaintiff - Appellant,

v.

**UNITED STATES OF AMERICA,**

Defendant - Appellee.

No. 04-15444

D.C. No. CV-03-00944-EHC

**MEMORANDUM**\*

Appeal from the United States District Court  
for the District of Arizona  
Earl H. Carroll, District Judge, Presiding

Submitted December 8, 2005\*\*  
San Francisco, California

Before: **BRUNETTI, KOZINSKI** and **SILVERMAN**, Circuit Judges.

1. “The [IRS] has the discretion to accept or reject any proposed installment agreement.” 26 C.F.R. § 301.6159-1(b). In making that determination, the officer

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

“shall take into consideration . . . whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.” 26 U.S.C. § 6330(c)(3)(C). The officer here did not abuse her discretion in considering plaintiff’s other tax liabilities in assessing plaintiff’s ability to pay. Nor did the officer abuse her discretion in finding that plaintiff did not demonstrate an ability to make the proposed payments. By plaintiff’s calculation, repayment of the liability would take six years. Plaintiff had only two profitable years, and a large loss in 2002. Plaintiff’s improving financial status did not establish that it would be able to make the escalating payments required by the proposed installment agreement.

2. The IRS may release a tax lien when the underlying tax liability has been satisfied or become legally unenforceable. 26 U.S.C. § 6325(a)(1). Plaintiff’s liability was neither satisfied nor unenforceable, so the IRS was not required to release the lien. See Burns v. United States (In re Burns), 974 F.2d 1064, 1065 (9th Cir. 1992).

**AFFIRMED.**